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c 280 Pounds Act

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CHAPTER 280

The Pounds Act

1. Except so far as varied by any by-law passed under paragraphs 3 to 6 of subsection 1 of section 388 of *The Municipal Act*, this Act shall be in force in every city, town, township and village in Ontario. R.S.O. 1937, c. 337, s. 1.

Scope of Act save as varied by by-laws. Rev. Stat., c. 243.

2. The owner or occupant of any land shall be responsible for any damage caused by any animal under his charge and keeping, as though such animal were his own property, and the owner of any animal not permitted to run at large by the by-laws of the municipality shall be liable for any damage done by such animal, although the fence enclosing the premises of the complainant was not of the height required by such by-laws. R.S.O. 1937, c. 337, s. 2.

Liability of owners and others for damage done.

3.—(1) Damages shall not be recoverable in respect of injuries committed upon any land in a provisional judicial district by horses, cattle, sheep or swine straying on such land unless the animal so straying was running at large contrary to a municipal by-law.

In provisional judicial districts.

(2) Where there is no such by-law in force in the municipality or where such trespass was committed upon land in any part of such district not included in an organized municipality, no such damages shall be recoverable unless the animal has broken through or jumped over a fence then being in reasonably good repair and of the height of four and one-half feet.

Unless animal broke through or jumped over fence.

(3) This section shall not apply to breachy or unruly animals. R.S.O. 1937, c. 337, s. 3.

Exception as to breachy animals.

4. No bull over the age of 10 months nor any swine shall be allowed to run at large in any part of such district not included in an organized municipality. R.S.O. 1937, c. 337, s. 4.

Bulls and swine not to run at large.

5. The owner of any bull or swine running at large contrary to section 4 shall be liable in damages for all injuries committed by such animal or animals, and also shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$10. R.S.O. 1937, c. 337, ss. 5, 23 (2).

Owner of bull liable for damages.

What animals to be impounded.

Poultry.

Notice to clerk as to animals impounded.

When the common pound is not safe.

Statement of demand to be delivered to pound-keeper by impounder.

Form of agreement with pound-keeper.

Release of animal on security being furnished.

When animal may be retained by distrainer.

6. If not previously replevied, the pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig, or other cattle, geese or other poultry, distrained for unlawfully running at large or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same; or if the owner of geese or other poultry refuses or neglects to prevent the same from trespassing on his neighbour's premises after a notice in writing has been served upon him of their trespass, he shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$10. R.S.O. 1937, c. 337, ss. 6, 23 (2).

7. Where any animal has been impounded, the pound-keeper shall, within 24 hours, deliver to the clerk of the municipality a notice in writing containing a description of the colour, age and natural and artificial marks of the animal as nearly as may be. R.S.O. 1937, c. 337, s. 7.

8. When the common pound of the municipality or place wherein a distress has been made is not secure, the pound-keeper may confine the animal in any enclosed place within the limits of the pound-keeper's division within which the distress was made. R.S.O. 1937, c. 337, s. 8.

9.—(1) The person distraining and impounding the animal shall, at the time of the impounding, deposit poundage fees, if demanded, and within 24 hours thereafter deliver to the pound-keeper duplicate statements in writing of his demands against the owner for damages, if any, not exceeding \$20, done by such animal, exclusive of poundage fees, and shall also give his written agreement, with a surety if required by the pound-keeper, in the following form or in words to the same effect:

I (*or we, as the case may be*) do hereby agree that I (*or we*) will pay to the owner of the (*describing the animal*) by me (*A.B.*) this day impounded, all costs to which the said owner may be put in case the distress by me the said (*A.B.*) proves to be illegal, or in case the claim for damages now put in by me the said (*A.B.*) fails to be established.

(2) The owner of an animal impounded shall at any time be entitled to it, on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the pound-keeper for all costs, damages and poundage fees that may be established against him. R.S.O. 1937, c. 337, s. 9.

10.—(1) If the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if the same is distrained by a resident of the municipality for straying within his premises, instead of delivering the animal to the pound-keeper, he may retain the animal in his own possession, provided he

makes no claim for damages done by the animal, and duly gives the notices hereinafter required.

(2) If the owner is known he shall forthwith give to him notice in writing of having distrained the animal. Notice to owner if known.

(3) If the owner is unknown, the person distraining shall, within 48 hours, deliver to the clerk of the municipality a notice in writing of having distrained the animal, containing a description of its colour, age and natural and artificial marks, as nearly as may be. If unknown, notice to clerk of municipality.

(4) The clerk on receiving the notice shall forthwith enter a copy thereof in a book to be kept by him for that purpose, and shall post it or a copy thereof in some conspicuous place on or near the door of his office, and keep the same so posted for at least one week, unless the animal is sooner claimed by the owner. Duty of clerk thereon.

(5) If the animal or animals distrained at the same time is or are of the value of \$10 or more, the distrainer shall cause a copy of the notice to be published in a newspaper in the county or district once a week for three successive weeks. If animals worth \$10 or over.
R.S.O. 1937, c. 337, s. 10.

11. If an animal is impounded, notices for the sale thereof shall be given by the pound-keeper or person who impounded it within 48 hours afterwards, but no pig or poultry shall be sold until after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same. R.S.O. 1937, c. 337, s. 11. Sale after notice.

12. If the animal is a pig, goat or sheep and is not impounded, but is retained in the possession of the person distraining it, the notices for the sale thereof shall not be given for one month, and if the animal is a horse or other cattle, the notices shall not be given for two months after the animal is distrained. R.S.O. 1937, c. 337, s. 12. If animal is not impounded, but retained.

13. The notices of sale shall be posted up for three clear successive days in three public places in the municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf, paying the penalty imposed by law, if any, the amount of the injury, if any, claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the pound-keeper and also of the fence-viewers, if any, and the expenses of the animal's keeping. R.S.O. 1937, c. 337, s. 13. Notice of sale unless redeemed.

Food to be
furnished
impounded
animal.

14. Every pound-keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal in any common pound or in any open or close pound, or in any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter, during the whole time that such animal continues impounded or confined. R.S.O. 1937, c. 337, s. 14.

Recovery of
expenses.

15.—(1) Every such person who furnishes the animal with food, water and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his time, trouble and attendance in the premises.

Procedure
for
recovery.

(2) Such value and allowance may be recovered, with costs, by summary proceeding before any justice of the peace within whose jurisdiction the animal was impounded, in like manner as fines, penalties or forfeitures for the breach of any by-law of the municipality may by law be recovered and enforced by a single justice of the peace and the justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of pound-keepers' fees and charges established by the by-laws of the municipality. R.S.O. 1937, c. 337, s. 15.

Other mode
of en-
forcing.

16. The pound-keeper, or person so entitled to proceed may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereinafter mentioned. R.S.O. 1937, c. 337, s. 16.

Procedure
for sale and
disposal of
proceeds.

17. If it is proved by an affidavit sworn before a justice of the peace, that the proper notices had been duly posted and published, then if the owner or some one for him does not before the sale of the animal, replevy or redeem the same, the pound-keeper who impounded the animal, or if the person who distrained it did not deliver it to a pound-keeper, but retained it in his own possession, any pound-keeper of the municipality may publicly sell the animal to the highest bidder, at the time and place mentioned in the notices, and after deducting the penalty and the damages, if any, and the fees and charges, shall apply the proceeds in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied, and of the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable, not exceeding \$20, done by the animal to the property of the person by whom or at whose instance it was distrained, and shall return the surplus, if any, to the original owner of the animal, or if not claimed by him within three months after the sale, the pound-keeper shall pay such surplus to the treasurer of the municipality. R.S.O. 1937, c. 337, s. 17.

18.—(1) If the owner, within 48 hours after the delivery of the statements provided for in section 9, disputes the amount of damages so claimed, the amount shall be decided by the majority of three fence-viewers of the municipality, one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the pound-keeper. Disputes regarding demand for damages, how determined.

(2) The fence-viewers or any two of them shall, within 24 hours after notice of their appointment, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the statutes or by-laws in that behalf at the time of the trespass and if it was a lawful fence, or if the animal was one not permitted to run at large by the by-laws of the municipality, they shall appraise the damages committed, and, within 24 hours after having made the view, shall deliver to the pound-keeper a written statement signed by at least two of them of their appraisal and of their lawful fees and charges. Fence-viewers to view and appraise damage.

(3) If in the case of an animal permitted to run at large, the fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands, together with a statement of their lawful fees to the pound-keeper, who shall, upon payment of all lawful fees and charges, deliver such animal to the owner if claimed before the sale thereof, but if not claimed, or if such fees and charges are not paid, the pound-keeper, after due notice, as required by this Act, shall sell the animal in the manner before mentioned at the time and place appointed in the notices. R.S.O. 1937, c. 337, s. 18. Where fence not lawful.

19. If a pound-keeper or person who impounds or confines, or causes to be impounded or confined any animal, refuses or neglects to provide and supply the animal with good and sufficient food, water and shelter, he shall be guilty of an offence and shall be liable on summary conviction to a penalty, for every day during which he is so in default, of not less than \$1 and not more than \$4. R.S.O. 1937, c. 337, ss. 19, 23 (2). Penalty for pound-keeper refusing to feed animal impounded.

20. Every fence-viewer who neglects his duty under this Act shall be guilty of an offence and on summary conviction shall be liable to a penalty of \$2. R.S.O. 1937, c. 337, ss. 20, 23 (2). Penalty for neglect of duty by fence-viewers.

21. Every pound-keeper and every person who distrains any animal under section 10 shall, on or before the 15th day of January in every year, file with the clerk of the municipality Statement to be filed with clerk by pound-keeper or distrainor.

a statement for the year ending on the 31st day of December next preceding showing,

- (a) the number of animals impounded or distrained, as the case may be;
- (b) the number of animals sold and the amounts received;
- (c) the sum received as poundage fees and cost of keep by the pound-keeper or party distraining;
- (d) the damages paid by any party;
- (e) all disbursements and to whom paid;
- (f) any other receipts and expenditures in connection therewith. R.S.O. 1937, c. 337, s. 21.

Certifying
statement.

22. The statement shall be certified to by the pound-keeper or the person distraining as a true and accurate statement for the year ending on the 31st day of December next preceding. R.S.O. 1937, c. 337, s. 22.

Penalty for
neglect to
comply with
Act.

23. Every pound-keeper or other person required to file such return who neglects or refuses to file it on or before the 15th day of January in any year, shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$10. R.S.O. 1937, c. 337, s. 23.

Penalties,
how to be
applied.

24. One-half of every penalty recovered under this Act shall be paid to the treasurer of the local municipality in which the offence was committed, and one-half to the private prosecutor, but where the information is laid by an officer of the municipality, the whole of the penalty shall be payable to the treasurer. R.S.O. 1937, c. 337, s. 24.
